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by that court announces certain important principles which arose out of a somewhat analogous state of facts.² The tailings and waste material from the reduction works of a copper company in Arizona were discharged into a tributary of the Gila river which resulted in their being deposited many miles below on the riparian land of an agricultural owner who used the river water for irrigation, and who suffered serious injury as a result of this pollution of the water. The court held that the mere fact that a statute of Arizona gave the right to use water for mining purposes did not justify an invasion of private property rights of the agricultural proprietor below and he had a clear right to apply for preventive relief. The court also held that even though this great mining industry, employing several thousand men and representing an investment of several million dollars might be, relatively, more important than the use agriculturalists made of the water, "the right of the lesser interest is not thereby subordinated to the greater," though "that is sometimes a consideration when a plaintiff seeks relief by injunction rather than by an action at law."

W. E. C.

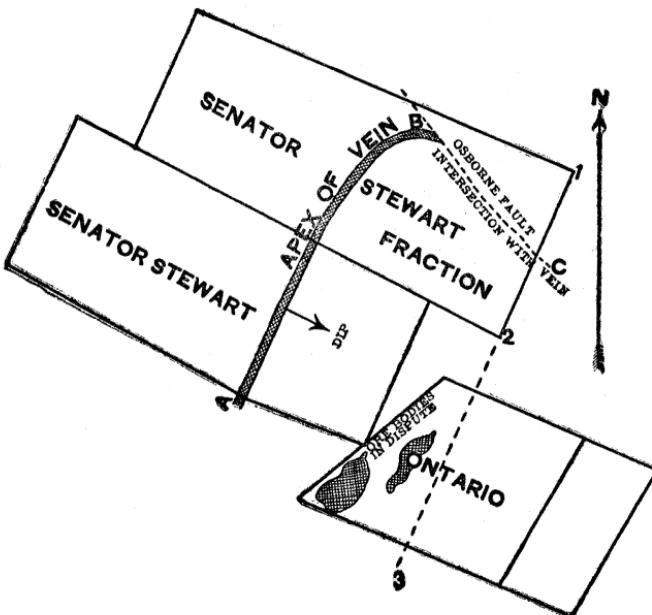
Mining Law: Extralateral Right: Apex.—An interesting case illustrating the complex nature of some of the extralateral right questions that are presented to the courts for determination has recently been decided by the Supreme Court of Idaho.¹ The accompanying diagram is necessary for a complete understanding of the situation.

The apex AB of the vein in question crossed the south side line of the Senator Stewart Fraction claim at about right angles and extended across this claim to within about 100 feet of the north side line where the vein was completely cut off and terminated on its onward course or strike by what is known as the "Osborne fault," BC. This fault, which was of great extent, had the effect of deflecting the strike of the vein from its normal direction for a short distance in the vicinity of the fault. The fault dipped southwesterly and under cut the vein so that if the country rock to the north of the fault were eroded away it would have left the end edge of the vein, where it intersected the fault, standing out like an overhanging cliff. The owner of the Senator Stewart Fraction claimed that this end edge of the vein abutting against the fault was a part of the apex of the vein even though the place where this edge intersected the easterly end line of the claim produced downward vertically was on the true dip of the vein and quite a distance below the surface. In other words, the contention was made that the apex of the vein in the Senator Stewart Fraction claim was along the line AB as indicated on the diagram and that when the

² *Arizona Copper Co. v. Gillespie*, (June 16, 1913) 33 Sup. Ct. Rep. 1004.

¹ *Stewart Mining Co. v. Ontario Mining Co.*, (July 7, 1913) (Idaho) 132 Pac. 787

vein reached and was cut off by the fault, the apex of the vein continued along the end edge intersection of the vein with the fault BC and therefore turned at more than a right angle from its former course. It was further contended that because the alleged apex ABC crossed through one side line and passed out through an end line of the Senator Stewart Fraction claim, that therefore the claim was entitled to an extralateral right on this vein measured between a vertical plane (1-2-3 on diagram) passed through the easterly end line and a plane parallel to the first plane passed through the point where the apex crossed the southerly side line of the claim. This extralateral sweep would have included certain ore bodies in dispute situated vertically beneath the surface of the Ontario lode claim controlled by the defendant.



The Court held that the end edge of the vein along the Osborne fault could not be treated as an apex of the vein and ore bodies in question for an overhanging end edge of a vein cut off as the evidence showed this to have been could not in any sense be called the top or apex of the vein. The Court said that the apex of a vein "must be the top or terminal edge of the vein on the surface or the nearest point to the surface" and that to constitute an apex the vein at that point must have "a dip as well as strike or course." This it would seem is the determining factor and is virtually the basis for the earlier

Duggan v. Davey² and Gilpin v. Sierra Nevada Consolidated Mining Co.³ decisions. This accords with Mr. Ross E. Browne's definition adopted by Judge Lindley in his work on the Law of Mines,⁴ to-wit: "The apex is all that portion of the terminal edge of the vein from which the vein has extension downward in the direction of its dip." No portion of BC the end edge of the vein in the Senator Stewart Fraction claim abutting against the undercutting fault can satisfy this definition.

There does not seem to be much logic or precedent for the court's statement that the extralateral sweep "must in all cases be pursued more upon the dip than the strike of the vein—more upon the downward than upon the onward course of the vein" and that "to pursue a vein in the direction of its strike at an angle of less than 45 degrees to the course thereof would clearly not be following the vein on its 'downward course,' as authorized by the statute." This language was unnecessary in view of the unquestionably sound basis for the decision previously noted above.

The vein in question was a secondary vein, the position of the primary or discovery vein not having been established by the evidence. The court, however, assumed for the purposes of this opinion that the presumption flowing from the Senator Stewart Fraction patent might be taken as sufficient, in the absence of evidence to the contrary, to establish that the end lines on the ground were the true end lines for all purposes. In view of the holding that the end edge of the vein along the fault did not constitute an apex the question as to what were the true end lines of the claim became immaterial.

W. E. C.

Trespass: Liability for Trespassing Animals.—Whether or not the liability of the owner of cattle for their trespasses is the survival of a primitive theory which visited punishment upon the thing which was the source of the injury, and held its owner responsible, without proof of moral blame, the common law of England was certainly well settled at the time of the settlement of the colonies to the effect that the owner of cattle was bound to keep them in, at his peril.¹ The influence, in the modern law, of the force of economic and social conditions could hardly find a better illustration than in the way in which this rule has been treated by courts and legislatures

² (1886) 4 Dak. 110, 26 N. W. 887.

³ (1890) 2 Idaho 696, 23 Pac. 547, 1014.

⁴ Lindley on Mines (2nd ed.) § 309.

¹ Holmes, Common Law, pp. 22-24; J. H. Wigmore, 7 Harvard Law Rev. 450-2.